

ECONOMIC ABUSE IN THE DOMESTIC VIOLENCE CONTEXT: TOWARDS A COMPREHENSIVE SOLUTION AT THE FEDERAL AND STATE LEVEL

TIA THOMAS*

Abstract

Economic abuse is an extremely common, yet often overlooked aspect of domestic violence. Economic abuse can affect every aspect of a survivor's life, often limiting their ability to obtain an education and maintain employment.¹ Although the federal government has passed several laws addressing domestic violence, these laws have only recently begun to address economic abuse and are mainly meant to provide civil support for survivors. Similarly, many states do not yet have criminal laws addressing the problem of economic abuse in the domestic violence context. Even with increased recognition at the federal level, there is still much that must be done to ensure that survivors of economic abuse receive the support they need and are able to hold their abusers accountable. Given that current legislation (at least on the federal level) provides civil support to survivors of both physical and economic forms of domestic violence, this Note focuses on criminal solutions and recommends that federal and state actors implement laws criminalizing economic abuse in the domestic violence context.

INTRODUCTION

Marissa and her husband moved overseas while she was pregnant with her first child. She stated that “the minute the aircraft door closed on that first flight

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¹ The author recognizes that persons of all genders can experience economic abuse by an intimate partner and will use the gender-neutral term ‘survivors’ wherever possible. However, much of the literature on economic abuse focuses solely on economic abuse of women, so complete gender neutrality is not possible.

out of here, he just turned into a monster.”² Her husband gave her a Visa card and an American Express card, so that he could check each item that she bought.³ She was told to put the most expensive items on her cards, which meant that, when they divorced, he was able to argue that she “was spending \$10,000 a month or whatever on credit cards.”⁴ Ultimately, Marissa and her children were thrown out onto the street after her husband “took hundreds of thousands of dollars in equity out of the house, effectively bumping up the mortgage repayments so she couldn’t afford them.”⁵ Her husband also cancelled her cards, so she was unable to pay for a place to stay.⁶ Ultimately, she went from living in a “beautiful big, multi-million-dollar house” to living in “one tiny room.”⁷

Tonya was raised by two parents and thrived during her first year after transferring to a new college.⁸ However, it all changed when she met a “charming” man who “excited” her because he was different than the men she usually dated.⁹ The relationship quickly deteriorated, affecting every aspect of Tonya’s life: they moved twice, her grades slipped, she took extra sick days at work, and her finances suffered.¹⁰ Her partner engaged in various forms of economic abuse: he refused to work—leaving Tonya responsible for the bills, stole money from her, and racked up credit card debt in her name.¹¹

Marissa and Tonya are only two of the millions of women who have survived domestic violence and, specifically, economic abuse in the domestic

² Johanna McDiarmid, ‘*He Could Check Everything I Bought*’: *This Is What Financial Abuse Looks Like*, ABC NEWS (Feb. 24, 2022), <https://www.abc.net.au/news/2019-07-06/women-share-their-stories-of-financial-abuse/11156442> [<https://perma.cc/SR8G-QMUL>].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Tonya Rapley, *Domestic and Economic Abuse—My Personal Story*, MY FAB FINANCE (2022), <https://myfabfinance.com/domestic-and-economic-abuse-my-personal-story> [<https://perma.cc/U5VR-97W4>].

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

violence context. Domestic violence, sometimes referred to as intimate partner violence (IPV),¹² is a widespread and persistent problem. Studies estimate that, in the United States, approximately ten million people are affected by domestic violence each year and that “as many as one in four women and one in nine men are victims of domestic violence.”¹³ The “predominant perception” is that domestic violence primarily “constitute[s] physical violence.”¹⁴ Indeed, the vast majority of research¹⁵ and many laws¹⁶ aimed at addressing domestic violence focus solely on its physical effects. However, domestic violence can actually take many forms: “economic, physical, sexual, emotional, and psychological.”¹⁷ While some states are taking steps to address these forms of abuse,¹⁸ a majority of states do not have any laws against economic abuse.¹⁹

Economic abuse has been referred to as a “frequently hidden or ‘invisible’ form of abuse.”²⁰ Economic abuse “centers on creating economic dependency on the perpetrator”²¹ and “includes behaviors that control a victim’s ‘ability to acquire, use, and maintain resources thus threatening her economic security and

¹² There is a legal distinction between domestic violence and IPV. Domestic violence refers to violence that happens within a household, between any two members of that household. IPV refers to violence between romantic partners, whether or not they are living in the same household. See Olivia Moorner, *Intimate Partner Violence vs. Domestic Violence*, YWCA SPOKANE (Jan. 5, 2021), <https://ywcaspokane.org/what-is-intimate-partner-domestic-violence> [<https://perma.cc/9QDF-WNH7>]. Given that the term domestic violence encompasses a broader spectrum of behavior and is often used interchangeably with IPV, this Note will use the term domestic violence.

¹³ Martin R. Huecker et al., *Domestic Violence*, National Library of Medicine: National Center for Biotechnology Information (Sept. 9, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK499891> [<https://perma.cc/MDK2-RS53>].

¹⁴ Judy L. Postmus et al., *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, 21 *TRAUMA, VIOLENCE, & ABUSE*, 261, 261 (2020).

¹⁵ Amanda M. Stylianou, *Economic Abuse Within Intimate Partner Violence: A Review of the Literature*, 33 *VIOLENCE & VICTIMS* 3, 3 (2018).

¹⁶ See, e.g., 18 U.S.C. § 2261.

¹⁷ Huecker et al., *supra* note 13.

¹⁸ See, e.g., N.J. STAT. ANN. § 2C:13-5 (West 2015); N.Y. PENAL LAW § 135.60 (McKinney 2020).

¹⁹ See *infra* Table 1.

²⁰ Postmus et al., *supra* note 14, at 261.

²¹ Stylianou, *supra* note 15.

potential for self-sufficiency.”²² Federal laws, including the Violence Against Women Act (VAWA), include some provisions that address economic abuse but remain inadequate.²³ In addition, while some state laws could be used to prosecute economic abusers,²⁴ additional legislation must be passed to ensure that economic abusers throughout the United States are held criminally accountable for their actions. Given the insidious nature of economic abuse and the difficulties that survivors of economic abuse face when trying to escape their situation, merely providing resources for survivors (i.e., through the programs established under VAWA)²⁵ may be insufficient. Criminal sanctions are necessary to ensure that those economic abusers are held responsible for their actions in a way that will deter both them and others from committing further economic abuse.²⁶

This Note begins in Part I by detailing both the various tactics used by economic abusers and the effects of economic abuse. In Part II, this Note explores current laws regulating domestic violence at both the federal and state level and discusses why those laws are inadequate to address the problem of economic abuse. Part III discusses current efforts to amend federal domestic violence statutes, efforts to pass a new federal statute, and additional actions that federal legislators could take. Part III also discusses possible actions that state

²² *Id.* at 4 (citing Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564 (2008)).

²³ Note that the Violence Against Women Reauthorization Act of 2022 includes a definition of economic abuse in the definition section and references economic abuse as part of the definition of domestic violence. *See* 34 U.S.C. § 12291. However, the definition of domestic violence references economic abuse only in the context of victim services. While this ensures that survivors of economic abuse in the domestic violence context will be able to receive support even in jurisdictions where economic abuse is not yet criminalized, more can be done to ensure that survivors of economic abuse know their abusers will be held criminally accountable.

²⁴ *See, e.g.*, N.Y. PENAL LAW § 135.60(9) (McKinney 2020).

²⁵ *See, e.g.*, 34 U.S.C. § 12441.

²⁶ The author acknowledges that a variety of opinions exist regarding the efficacy of criminal sanctions for domestic violence. *See, e.g.*, Leigh Goodmark, *Intimate Partner Violence, Criminalization, and Inequality*, UC PRESS BLOG (2022), <https://www.ucpress.edu/blog/47831/intimate-partner-violence-criminalization-and-inequality> [<https://perma.cc/D6GD-UG6K>] (discussing both how “the evidence on criminalization’s deterrent effect is inconclusive” and how criminalization can create “economic hardship for those caught in the criminal legal system”). The author believes that, while such concerns should be considered when deciding whether and how to criminalize economic abuse, some form of criminalization is still necessary in order to stop current abusers and to deter would-be abusers. Any single method of addressing economic abuse will likely face at least some significant flaws—thus, a more comprehensive solution is necessary, which, to be fully comprehensive, should include some form of criminal solution.

legislators could take and proposes a set of actions most likely to hold economic abusers accountable.

I. Background

Economic abuse, as previously discussed, primarily involves creating dependence on one's abuser and behaviors that significantly affect a "[survivor's] ability to acquire, use, and maintain" key economic resources.²⁷ Such resources can include transportation, employment, and education.²⁸ Economic abuse can be measured in different ways, with researchers using at least three standardized measurement tools to assess the prevalence of economic abuse.²⁹ The first instrument is the Scale of Economic Abuse (SEA), created in 2008 in an attempt to "develop a comprehensive measure that captures the economically abusive behaviors used by men who batter."³⁰ The SEA was revised in 2015³¹ and 2020.³² The second instrument is the Work/School Abuse Scale (W/SAS), created in an effort to better understand how abuse by an intimate partner may prevent or hinder survivors' attainment of employment or education.³³ The last instrument is the Domestic Violence-Related Financial Issues Scale, created in 2009 to assess the financial issues faced by female survivors of domestic violence.³⁴ Given the variety of ways that economic abuse is measured, estimated rates of economic abuse vary from study to study. That said, most studies estimate that between ninety-four and ninety-nine percent of

²⁷ Stylianou, *supra* note 15, at 4.

²⁸ Postmus et al., *supra* note 14, at 262.

²⁹ ADRIENNE E. ADAMS, MEASURING THE EFFECTS OF DOMESTIC VIOLENCE ON WOMEN'S FINANCIAL WELL-BEING 1 (2011).

³⁰ Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 569 (2008).

³¹ Judy L. Postmus et al., *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 VIOLENCE AGAINST WOMEN 692, 692 (2016) (creating a new, shorter version of the SEA known as the SEA-12).

³² Adrienne E. Adams et al., *The Revised Scale of Economic Abuse (SEA2): Development and Initial Psychometric Testing of an Updated Measure of Economic Abuse in Intimate Relationships*, 10 PSYCH. VIOLENCE 268, 268 (2020) (revising the SEA again, this time creating the SEA2, a 14-item instrument with two subscales that are designed to measure both an economic dimension of IPV and distinct forms of economic abuse).

³³ Stephanie Riger et al., *Measuring Interference with Employment and Education Reported by Women with Abusive Partners: Preliminary Data*, 15 VIOLENCE & VICTIMS 161, 163 (2000).

³⁴ Terri L. Weaver et al., *Development and Preliminary Psychometric Violence-Related Financial Issues Scale (DV-FI)*, 24 J. INTERPERSONAL VIOLENCE 569, 569 (2009).

survivors of domestic violence have experienced economic abuse at some point during an abusive relationship.³⁵

A. Tactics Used by Economic Abusers

The National Network to End Domestic Violence (NNEDV) has an entire page devoted to describing the various tactics used by economic abusers.³⁶ This page emphasizes the subtle nature of economic abuse and lists various methods that abusers can use to gain control over survivors, namely: forbidding the survivor to work, sabotaging employment opportunities by stalking or harassing the survivor at the workplace, physically battering the survivor prior to important work meetings or interviews, forbidding the survivor from attending job training or advancement opportunities, controlling how all of the money is spent, not including the survivor in investment or banking accounts, withholding money or giving an “allowance,” forcing the survivor to write bad checks or file fraudulent tax returns, running up large amounts of debt on joint accounts, refusing to work or contribute to the family income, withholding funds for the survivor or children to obtain basic needs such as food and medicine, hiding assets, stealing the survivor’s identity, property or inheritance, forcing the survivor to work in a family business without pay, refusing to pay bills and ruining the survivor’s credit score, forcing the survivor to turn over public benefits or threatening to turn them in for misusing benefits, filing false insurance claims, refusing to pay or evading child support, and manipulating the divorce process by drawing it out. Studies suggest that this list only scratches the surface.³⁷ Abusers may also interfere with their partners’ ability to find jobs not only by engaging in the tactics listed above, but also by turning off the morning alarm, refusing to provide childcare,³⁸ and more.³⁹

Research suggests that abusers are able to engage in these tactics by utilizing a variety of coercive tools, such as “isolation, intimidation, threats, withholding of necessary resources . . . and abuse of children, other relatives, or

³⁵ See Adams, *supra* note 29, at 1; Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 411 (2012) [hereinafter Postmus, *Understanding Economic Abuse*].

³⁶ *About Financial Abuse*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (2017), <https://nnedv.org/content/about-financial-abuse> [<https://perma.cc/WR5G-GGUX>]. While the webpage is titled “About Financial Abuse,” many of the behaviors describe fall under the broader heading of economic abuse.

³⁷ See, e.g., Adams et al., *supra* note 30, at 565; Postmus et al., *supra* note 14, at 262.

³⁸ Adams et al., *supra* note 30, at 565.

³⁹ *Id.* at 565–67.

even pets.”⁴⁰ In a federally funded technical report, Dutton, et. al. created a model of intimate partner coercive control.⁴¹ According to this model, abusers first set the stage by either creating vulnerabilities or exploiting existing ones, leaving their partners vulnerable to coercion. Abusers then make coercive threats and engage in surveillance of their partner before ultimately delivering the threatened negative consequences.⁴² The subtle nature of these tactics, combined with the fact that the “means and effects . . . are easily confused with the range of sacrifices women are expected to make in their roles as homemakers, parents and sexual partners,”⁴³ makes it difficult to detect abuse. That said, some of the effects of economic abuse are easily identifiable.

B. Effect of Economic Abuse: Economic Dependency

Ultimately, the greatest effect of economic abuse is its impact on survivors’ ability to leave their abusers.⁴⁴ Several studies suggest that economic abuse may explain why many women stay with their abusers. A survivor who is economically dependent on their abuser will find it more difficult to pursue legal charges or to obtain a restraining order.⁴⁵ A lack of resources, coupled with isolation, can make it difficult for survivors to find adequate housing, financial assistance, job training, childcare, and other forms of assistance that would enable them to support themselves after leaving an abusive partner. The fact that many existing laws surrounding domestic violence focus solely on assisting those who suffer physical domestic violence only makes it harder to leave.

As alluded to above, economic abuse can lead to complete dependence on one’s partner.⁴⁶ When an abuser controls a survivor’s access to finances and other economic resources, they ensure not only economic dependency but also potential dependence on an abuser for access to food, housing, transportation,

⁴⁰ MARY ANN DUTTON ET AL., DEVELOPMENT AND VALIDATION OF A COERCIVE CONTROL MEASURE FOR INTIMATE PARTNER VIOLENCE: FINAL TECHNICAL REPORT 1 (2005).

⁴¹ *Id.* at 4.

⁴² An abuser may engage in surveillance by engaging in any number of activities, such as checking or opening their partner’s mail or journal, keeping track of their partner’s cell phone use, checking their partner’s clothing, or requiring their partner to report their behavior to the abuser. *Id.* at 7.

⁴³ EVAN STARK, COERCIVE CONTROL 229–30 (2007).

⁴⁴ Postmus et al., *supra* note 14, at 262.

⁴⁵ Cynthia K. Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study*, 21 *Violence Against Women* 3, 5 (2015).

⁴⁶ Postmus et al., *supra* note 14, at 262.

and other basic freedoms.⁴⁷ Due to such dependency, the survivor has a limited ability to become economically self-sufficient and must thus rely on the abuser for support.⁴⁸ A survivor's economic self-sufficiency may be thwarted not only by limited access to household finances, but also by limitations on a survivor's access to employment and education.

By constraining a survivor's ability to find or maintain employment, abusers may force long-term economic dependency. Several studies establish that there is a complicated relationship between employment, economic status, and domestic violence.⁴⁹ One model, "exchange theory," predicts that if a woman contributes significant resources to a household, her partner may refrain from violence simply because he has more to lose if she leaves him.⁵⁰ In contrast, when a woman is economically dependent on an abusive partner, said partner will have little to lose and can thus use economic abuse as a means to exert control over his partner.⁵¹ That said, it is also possible that an abuser's desire for dominance will lead the abuser to engage in violence, even when their partner achieves some measure of financial independence.⁵² Ultimately, however, research suggests that survivors who are able to work lessen their abuser's ability to control them and therefore can more easily escape an abusive situation.⁵³ Thus, a woman whose abuser prevents her from obtaining or maintaining employment is not only economically dependent on her abuser, but is also prevented from obtaining resources that might decrease her dependence and allow her to leave her abuser.

Furthermore, an abuser might enhance dependency by limiting their partners' ability to obtain education. This can isolate the survivor and limit their ability to obtain the resources necessary to leave their partner.⁵⁴ On the other

⁴⁷ DUTTON et al., *supra* note 40, at 5.

⁴⁸ Postmus, *Understanding Economic Abuse*, *supra* note 35, at 414. Economic self-sufficiency is typically defined as "the ability to maintain long-term employment with wages that keep individuals out of poverty and off of welfare rolls," though some view this definition as "restrictive" and as not including "the voices of women and their experiences of feeling economically self-sufficient." *Id.*

⁴⁹ Sanders, *supra* note 45, at 5.

⁵⁰ *Id.*

⁵¹ *Id.* at 6.

⁵² *Id.*

⁵³ *Id.* at 5.

⁵⁴ Riger et al., *supra* note 33, at 163.

hand, survivors who are successful in obtaining increasing levels of education may feel a greater sense of independence and ability to assert themselves, which may threaten an abuser's authority and control.⁵⁵ An abuser's efforts to limit a survivor's access to education can not only increase the survivor's economic dependence on their abuser, but also affect their confidence, making them less likely to leave the abuser.

Until the effects of economic abuse are fully recognized by the law, it will continue to be difficult for survivors to both escape their abusers and to hold their abusers accountable. Legislators seem to be recognizing that economic abuse can and often does play a critical role in a survivor's decision to stay with an abusive spouse and are taking steps to ensure that survivors of economic abuse have access to the same resources as survivors of physical domestic violence. That said, these reforms are not enough. Even if a survivor knows of the resources that are available, they may still fear taking any action to leave their abuser. However, if a survivor knows that their abuser will face criminal sanctions, it may give them the courage to leave. Thus, it is not enough to simply provide support to survivors or to criminalize only the physical forms of domestic violence—economic abuse must be criminalized as well. Only then will the control that economic abusers exert over survivors begin to weaken.

II. An Overview of Current Domestic Violence Laws

Both the federal government and individual states have passed various laws aimed at addressing the problem of domestic violence and ensuring that survivors receive the support they need. This Part will introduce the various federal and state domestic violence laws and explain why, despite providing support to survivors and addressing physical forms of domestic violence, the majority of these laws do not sufficiently address the problem of economic abuse.

A. Federal Laws that Address the Problem of Domestic Violence

Since 1984, the federal government has passed several laws that address the problem of domestic violence. This section will examine the Family Violence Prevention and Services Act, the Violence Against Women Act (VAWA), and 18 U.S.C. § 2261 (which criminalizes interstate domestic violence.)

⁵⁵ *Id.* at 170.

1. The Family Violence Prevention and Services Act

The Family Violence Prevention and Services Act, passed in 1984, was the first federal act to address the problem of domestic violence. The Family Violence Prevention and Services Act, briefly, assists states and Indian tribes in efforts to increase awareness about and prevention of domestic and other kinds of violence; assists those entities in efforts to provide shelter for domestic violence survivors and their dependents; provides for a national domestic violence hotline; and provides for training relating to domestic and other forms of violence programs to states and Indian tribes, local public agencies, nonprofit private organizations, and anyone else seeking such training.⁵⁶ Within the Family Violence Prevention and Services Act, domestic violence is defined by reference to 34 U.S.C. § 12291(a), a provision within VAWA that includes a definition of domestic violence. This definition is provided below, in the section regarding VAWA.

As discussed below, VAWA's definition of domestic violence (as of 2022) includes a reference to economic abuse "in the case of victim services."⁵⁷ Thus, one can assume that any reference to domestic violence in the Family Violence Prevention and Services Act now covers economic abuse as well. However, although the Family Violence Prevention and Services Act provides important grants to states, [Native American] tribes, and other organizations to support their efforts to both assist survivors and prevent domestic violence, the federal government must take additional steps to fully address the problem of economic abuse.

2. The Violence Against Women Act

Although the Family Violence Prevention and Services Act mentions domestic violence, VAWA was the first Act that targeted the issue head-on. VAWA was first passed in 1994 and then amended in 2022. VAWA provides for the creation of various grant programs aimed at helping ensure safe streets and safe homes for women, establishing a domestic violence task force, incentivizing the development of long-term sustainability and self-sufficiency options for survivors of domestic violence, and more.

In VAWA, as amended in 2022, domestic violence is defined as follows:

⁵⁶ 42 U.S.C. § 10401.

⁵⁷ 34 U.S.C. § 12291(a)(12).

The term ‘domestic violence’ includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

(A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;

(B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) shares a child in common with the victim; or

(D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.⁵⁸

The 2022 amendments to VAWA also added a definition of economic abuse. That definition reads as follows:

The term ‘economic abuse,’ in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person’s ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—

(A) restrict a person’s access to money, assets, credit, or financial information;

(B) unfairly use a person’s personal economic resources, including money, assets, and credit, for one’s own advantage; or

(C) exert undue influence over a person’s financial and economic behavior or decisions, including forcing default on

⁵⁸ *Id.*

joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.⁵⁹

The revision of the definition of domestic violence and the inclusion of a definition of economic abuse are dramatic improvements from the prior version of VAWA, which focused only on “felony or misdemeanor crimes of violence.”⁶⁰ However, it is worth noting that the definition of domestic violence only explicitly includes economic abuse “in the case of victim services.”⁶¹ While this ensures that all survivors will receive assistance, even in states where economic abuse is not yet criminalized, this definition remains inadequate. For example, crimes such as coercion or extortion (discussed *infra*) may not fall under the family or domestic violence laws of a particular jurisdiction and thus may not be seen as a form of domestic violence. In addition, while VAWA now recognizes economic abuse as a form of domestic violence, it contains no provisions that would ensure that abusers are held criminally accountable for their actions.

Congress’s reticence to include the provisions described above may be explained in part by VAWA’s history. As originally enacted, one provision of VAWA provided a civil remedy for survivors of domestic violence.⁶² However, that provision was held unconstitutional in *United States v. Morrison*,⁶³ leaving survivors of domestic violence without a federal means of bringing a civil case against their abusers. Congress may thus be wary of including a criminal sanction or a new civil remedy in VAWA because of fears that it would similarly be held unconstitutional. That said, one of the Supreme Court’s reasons for holding this provision unconstitutional was its view that “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity.”⁶⁴ The Court further stated that “[s]imply because Congress may conclude that a particular activity affects interstate commerce does not

⁵⁹ *Id.* § 12291(a)(13).

⁶⁰ *Id.* § 12291(a)(8) (1994) (amended 2022).

⁶¹ *Id.* § 12291(a)(12).

⁶² *Id.* § 12361, *invalidated by* *United States v. Morrison*, 529 U.S. 598 (2000).

⁶³ *United States v. Morrison*, 529 U.S. 598, 627 (2000).

⁶⁴ *Id.* at 613.

necessarily make it so.”^{65, 66} Thus, there are potentially constitutional ways in which Congress could act to include the aforementioned provisions addressing economic abuse. Part III of this Note, *infra*, will discuss ways in which Congress could revise VAWA to address the Supreme Court’s concerns while providing a way to hold economic abusers criminally accountable.

A full examination of VAWA’s remaining provisions is beyond the scope of this Note. However, it is worth mentioning some of the key ways in which VAWA provides states with funding to assist survivors. For example, 34 U.S.C. § 12351 grants the Attorney General authority to award grants to states, local governments, and various other organizations “that have a documented history of effective work concerning domestic violence” in order to provide assistance to those “who are homeless, or in need of . . . housing assistance, as a result of a situation of domestic violence.”⁶⁷ In addition, 34 U.S.C. § 12474 authorizes the Secretary of Health and Human Services to award “grants, contracts, or cooperative agreements” to eligible entities to develop “long-term sustainability and self-sufficiency options for adult and youth victims of domestic violence.”⁶⁸ However, these provisions appear to be directed at organizations that assist those who are in need of housing *after* leaving their abusers. Many survivors do not have the resources necessary to leave their abusers in the first place and are thus unable to access the resources provided through these grant programs. This further highlights the value of criminal laws addressing domestic violence. If an abuser is incarcerated, even for a short period of time, it may allow a survivor to obtain the resources necessary to leave the abuser.

Ultimately, while Congress has begun taking steps to address the problem of economic abuse in the domestic violence context, more must be done to ensure that all survivors can access the resources provided pursuant to VAWA.

3. 18 U.S.C. § 261

Section 2261 of Title 18 of the United States Code criminalizes interstate domestic violence.⁶⁹ Section 2261(a)(1) makes it an offense to travel in

⁶⁵ *Id.* at 614 (internal citations omitted).

⁶⁶ In order to regulate an activity under the Commerce Clause, Congress must find that said activity affects interstate commerce. The test to determine if an activity affects interstate commerce is discussed *infra* Part III(A)(iii).

⁶⁷ 34 U.S.C. § 12351.

⁶⁸ *Id.* § 12474.

⁶⁹ 18 U.S.C. § 2261.

interstate or foreign commerce “with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner” and to, “in the course of or as a result of such travel or presence, commit[] or attempt[] to commit a crime of violence against that spouse, intimate partner, or dating partner.”⁷⁰ Section 2261(a)(2) similarly makes it a crime to “cause[] a spouse, intimate partner or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud” and to “in the course of, as a result of, or to facilitate such conduct or travel, commit[] or attempt[] to commit a crime of violence against that spouse, intimate partner, or dating partner.”⁷¹ This provision, though it represents a federal effort to criminalize some instances of domestic violence, remains inadequate to address the problem of economic abuse. In order to be convicted under this section, an abuser must “commit a crime of violence.”⁷²

B. State Efforts to Address the Problem of Domestic Violence: A Brief Summary

States have enacted a variety of laws that attempt to address domestic violence. Margaret E. Johnson, in her article *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law* (“*Redefining Harm*”), provides an excellent summary of the acts of domestic violence that are recognized as “worthy of a civil law remedy.”⁷³ She argues that civil protective order laws should be revised to cover all forms of domestic violence, including “psychological, emotional, and economic abuse.”⁷⁴ This Note seeks to advance a similar argument with respect to state criminal laws. Rather than reiterating the information presented in *Redefining Harm*, this section will primarily examine state laws that criminalize abusive behavior.

While some states have laws that seem to criminalize economic abuse, many have laws that solely address the physical aspects of domestic and intimate partner violence. While every single state not only criminalizes physical forms of domestic violence, but also criminalizes other—non-economic and non-physical—forms of domestic violence, barely one third of states have criminal laws that could be used to hold economic abusers

⁷⁰ *Id.* § 2261(a)(1).

⁷¹ *Id.* § 2261(a)(2).

⁷² *Id.* § 2261(a)(1).

⁷³ Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1138 (2009).

⁷⁴ *Id.*

accountable. Table 1 highlights this fact in stark fashion—while every single row in the column “Has Laws Criminalizing Physical and Other, Non-Economic Forms of Domestic Violence” contains the word “yes,” only seventeen rows in the column “Has Laws Criminalizing Economic Abuse as a Form of Domestic Violence” contain a word other than “no.”⁷⁵

The first category of laws covers those which criminalize domestic violence, domestic violence by strangulation or suffocation, assault, rape, sodomy, sexual misconduct, sexual torture, sexual abuse, and other similar actions. The only laws which can reasonably be construed as fitting into the second category are laws criminalizing coercion and some laws criminalizing extortion and/or intimidation.⁷⁶ However, neither coercion nor extortion laws explicitly criminalize economic abuse or cover all forms of economic abuse; thus, it is unclear if these laws can be used to prosecute economic abuse in practice. Therefore, states with laws against coercion are categorized as “maybe” having laws that criminalize economic abuse.

TABLE 1

STATE	Has Laws Criminalizing Physical and Other, Non-Economic Forms of Domestic Violence	Has Laws Criminalizing Economic Abuse as a Form of Domestic Violence
Alabama	Yes	Maybe ⁷⁷
Alaska	Yes	Maybe ⁷⁸

⁷⁵ Based on information available at WomensLaw.org, which provides a list of “state-specific laws that might be useful for victims and survivors of domestic violence[,]” and searches like the following: “[state] law against coercion” and “[state] law against extortion.” *See Legal Information, WOMENSLAW.ORG* (2021), <https://www.womenslaw.org/laws> [<https://perma.cc/VJ6W-XC7G>].

⁷⁶ *See* Colorado’s extortion law, COLO. REV. STAT. ANN. § 18-3-207 (West 2013) (defining extortion as “without legal authority and with the intent to induce another person against that other person’s will to perform an act or to refrain from performing a lawful act, mak[ing] a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person”); *but see* CAL. PENAL CODE § 519 (West 2020) (making no reference of an intent to induce another person to act or refrain from acting against that person’s will, and making no reference to threats of economic hardship).

⁷⁷ ALA. CODE § 13A-6-25 (2015) (“A person commits the crime of criminal coercion if, without legal authority, he threatens to confine, restrain, or to cause physical injury to the threatened person or another, or to damage the property or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his will to do an unlawful act or refrain from doing a lawful act.”).

⁷⁸ *See* ALASKA STAT. ANN. § 11.41.530 (West 2007).

Arizona	Yes	No
Arkansas	Yes	No
California	Yes	No ⁷⁹
Colorado	Yes	Maybe ⁸⁰
Connecticut	Yes	Maybe ⁸¹
Delaware	Yes	Likely ⁸²
District of Columbia	Yes	Maybe ⁸³
Florida	Yes	No ⁸⁴
Georgia	Yes	No
Hawaii	Yes	Partial criminalization ⁸⁵

⁷⁹ CAL. FAM. CODE. § 6320 (West 2013) (authorizing the issuance of an ex parte order against someone who engages in coercive control). However, this law is not a criminal law, so it does not fall within this category.

⁸⁰ See *supra* note 76, discussing COLO. REV. STAT. ANN. § 18-3-207 (West 2013).

⁸¹ CONN. GEN. STAT. ANN. § 53a-192 (West 2012).

⁸² DEL. CODE ANN. tit. 11, § 791 (West 2010) (stating that “[a] person is guilty of coercion when the person compels or induces a person to engage in conduct which the victim has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which the victim has a legal right to engage, by means of instilling in the victim a fear that, if the demand is not complied with, the defendant or another will . . . perform any other act which is calculated to harm another person materially with respect to that person’s health, safety, business, calling, career, financial condition, reputation or personal relationships”). Given that this law explicitly criminalizes actions which are calculated to harm another person with respect to his financial condition, it is likely that this law could be used to hold economic abusers accountable.

⁸³ D.C. CODE ANN. § 22-3251 (West 2017) (stating that a person commits extortion if said person “obtains or attempts to obtain the property of another with the other’s consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury.”) This law could potentially be used to criminalize economic abuse in instances where an economic abuser obtains control over a survivor’s wages or other property.

⁸⁴ FLA. STAT. ANN. § 760.51 (West 2016) could potentially be used to hold economic abusers accountable; however, it provides for a civil remedy and does not criminalize a particular action.

⁸⁵ HAW. REV. STAT. ANN. § 709-906 (West 2021) (making it a misdemeanor to exercise coercive control over a family or household member). See HAW. REV. STAT. ANN. § 586-1 (2008) (defining coercive control as “a pattern of behavior that seeks to take away the individual’s liberty or freedom and strip away the individual’s sense of self . . . whereby the ‘coercive control’ is designed to make an individual dependent by . . . regulating their everyday behavior including . . . [c]ontrolling how much money is accessible to the individual and how it is spent.”). This is a comprehensive statute that would likely reach most forms of economic abuse. That said, it is not clear that “[c]ontrolling how much money is accessible to the individual and how it is spent” extends to economically abusive actions that limit one’s ability to attain education or to attain and maintain employment.

Idaho	Yes	No
Illinois	Yes	Maybe ⁸⁶
Indiana	Yes	No
Iowa	Yes	No
Kansas	Yes	No
Kentucky	Yes	No
Louisiana	Yes	No
Maine	Yes	Maybe ⁸⁷
Maryland	Yes	No
Massachusetts	Yes	No
Michigan	Yes	No
Minnesota	Yes	No
Mississippi	Yes	Partial Criminalization ⁸⁸
Missouri	Yes	No
Montana	Yes	No
Nebraska	Yes	No
Nevada	Yes	Maybe ⁸⁹

⁸⁶ 720 ILL. COMP. STAT. ANN. 5/12-6 (West 2017) (making it a crime to communicate, among other things, threats to “[i]nfllict physical harm” or to “[e]xpose any person to hatred, contempt, or ridicule” in order to “cause another to perform or to omit the performance of any act”).

⁸⁷ Maine is unique, in that the relevant law, ME. REV. STAT. ANN. tit. 17, § 2931 (West 2006), makes it illegal to “intentionally injure, intimidate, or interfere with . . . any other person in the free exercise or enjoyment of any right or privilege, secured to that person by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States.” Depending on how “right or privilege” is interpreted, this law could be used to criminalize at least some economically abusive tactics.

⁸⁸ MISS. CODE ANN. § 37-11-20 (West 2015) (making it “unlawful for any person to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce . . . any person enrolled in any school for the purpose of interfering with the right of that person to attend school classes or of causing him not to attend such classes”). A person who violates this provision is guilty of a misdemeanor. While this statute would only criminalize the narrow offense of interfering with a person’s right to attend school classes, it still criminalizes one form of economic abuse.

⁸⁹ NEV. REV. STAT. ANN. § 207.190 (West 2015) (making it unlawful to, with the intent of compelling “another person to do or abstain from doing an act which the other person has a right to do or abstain from doing, (a) Use violence or inflict injury upon the other person or any of the other person’s family, or upon the other person’s property, or threaten such violence or injury; (b) Deprive the person of any tool, implement, or clothing, or hinder the person in the use thereof; (c) Attempt to intimidate the person by threats or force.”) Whether this covers economic abuse likely depends on the definition of the terms “threat” and “force” in part (c). If such terms are only interpreted as extending to threats of physical violence or physical force, then this statute likely does not cover economic abuse. If, however, they cover other kinds of threats, such as threats of ceasing to provide financial support, etc., this statute could be used to hold economic abusers accountable. It is also possible that the terms “tool” and “implement” could be construed to encompass financial resources, in which case part (b) could also be used to prosecute economic abusers.

New Hampshire	Yes	Maybe ⁹⁰
New Jersey	Yes	Likely ⁹¹
New Mexico	Yes	No
New York	Yes	Likely ⁹²
North Carolina	Yes	No
North Dakota	Yes	No
Ohio	Yes	No
Oklahoma	Yes	No
Oregon	Yes	No
Pennsylvania	Yes	No
Rhode Island	Yes	No
South Carolina	Yes	No ⁹³
South Dakota	Yes	No
Tennessee	Yes	Maybe ⁹⁴
Texas	Yes	No

⁹⁰ N.H. REV. STAT. ANN. § 637:5 (2016) (criminalizing theft by extortion). A person commits the offense if “he obtains or exercise control over the property of another by extortion.” Extortion can occur when a person threatens to “do any . . . act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person’s health, safety, business, calling, career, financial condition, reputation or personal relationships.” *Id.*

⁹¹ N.J. STAT. ANN. § 2C:13-5(a)(7) (West 2015) (stating that “[a] person is guilty of criminal coercion if, with purpose unlawfully to restrict another’s freedom of action to engage or refrain from engaging in conduct, he threatens to . . . perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business calling, career, or financial condition, reputation or personal relationships.”) Given that this law explicitly criminalizes actions which are calculated to harm another person with respect to their financial condition, it is likely that this law could be used to hold economic abusers accountable. *See also* N.Y. PENAL LAW § 135.60(9) (McKinney 2020).

⁹² N.Y. PENAL LAW §§ 135.60–135.65 (McKinney 2020) (criminalizing coercion in the first, second, and third degrees).

⁹³ While there is currently no law in South Carolina that criminalizes economically abusive tactics, it is worth noticing that in the 123rd Session of the South Carolina General Assembly, H. 5271 was introduced and would criminalize coercive control. H. 5271, 123d Gen. Assemb. (S.C. 2020).

⁹⁴ TENN. CODE ANN. § 39-14-112 (West 2011) (stating that “[a] person commits extortion who uses coercion upon another person with the intent to . . . restrict unlawfully another’s freedom of action”).

Utah	Yes	Maybe ⁹⁵
Vermont	Yes	No
Virginia	Yes	No
Washington	Yes	Maybe ⁹⁶
West Virginia	Yes	No
Wisconsin	Yes	No
Wyoming	Yes	No

To reiterate, all states have, at the very least, laws criminalizing both physical forms of domestic violence and other forms of domestic violence such as stalking and harassment. However, a mere seventeen states have laws that could theoretically be used to hold economic abusers criminally accountable, and only five states—Delaware, Hawaii, Mississippi, New Jersey, and New York—have laws that can likely be used in this manner.⁹⁷ Ultimately, while some states are greatly increasing the protections available to survivors of economic abuse in the domestic violence context, there is much left to be done.

III. Legislative Approaches That Will Ensure Economic Abusers are Held Accountable

There are a wide variety of steps that both the federal government and state governments can take to better hold economic abusers accountable. One article suggests that civil domestic violence laws, including civil protective order laws, should remedy all forms of abuse suffered by survivors of domestic and intimate partner violence: psychological, emotional, economic, and physical.⁹⁸ This Note

⁹⁵ Utah’s extortion law, UTAH CODE ANN. § 76-6-406 (West 2015) (criminalizing theft by extortion). The definition of extortion includes threats to “do any . . . act which would not in itself substantially benefit the actor but which would harm substantially any other person with respect to that person’s health, safety, business, calling, career, financial condition, reputation, or personal relationships.” *Id.*

⁹⁶ See WASH. REV. CODE ANN. § 9A.56.130 (West 2015) (extortion in the second degree, in which the definition of extortion (WASH. REV. CODE ANN. §§ 9A. 04.110(28)(d)–(j) (West 2015)) is similar to the definition contained in UTAH CODE ANN. §76-6-406 (West 2015)); WASH. REV. CODE ANN. § 9A.36.070 (West 2015) (defining coercion as “compel[ling] or induc[ing] a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in”). WASH. REV. CODE ANN. § 9A.36.070 (2015) could be used to hold accountable those persons who couple economic abuse with threats of violence.

⁹⁷ See DEL. CODE ANN. tit. 11, § 791 (West 2010); HAW. REV. STAT. ANN. § 709-906(6) (West 2021); MISS. CODE ANN. § 37-11-20 (West 2015); N.J. STAT. ANN. § 2C:13-5 (West 2015); N.Y. PENAL LAW § 135.60 (McKinney 2020).

⁹⁸ Johnson, *supra* note 73, at 1107.

argues that both a civil and criminal remedy is necessary at the federal level and that states should take steps to criminalize economic abuse.

A. Legislative Approaches Available to the Federal Government

The federal government must take steps to address the problem of economic abuse as a form of domestic violence. Doing so will provide states with a foundational model for creating their own economic abuse laws. Having such a model may avoid the problem that one state, Maine, confronted in attempting to regulate economic abuse. In 2019, Maine amended the Maine Fair Credit Reporting Act and included a provision requiring consumer reporting agencies to take certain actions “if a consumer provides documentation to the consumer reporting agency . . . that [a] debt or any portion of [a] debt is the result of economic abuse.”⁹⁹ However, in *Consumer Data Industry Ass’n v. Frey*, the United States District Court for the District of Maine held that this amendment was preempted by the federal Fair Credit Reporting Act.¹⁰⁰ While the district court’s opinion was later overturned by the First Circuit in February of 2022,¹⁰¹ this example nonetheless illustrates the problems that states may face when attempting to regulate economic abuse. Furthermore, it highlights the need for a federal solution that can both guide states and serve as an alternative means to hold economic abusers accountable, should state efforts fall short.

There are several legislative approaches available to the federal government. The federal government has already taken one, by passing the Violence Against Women Act Reauthorization Act of 2022. As previously discussed, the amended VAWA includes economic abuse in the definition of domestic violence and includes a separate definition of economic abuse. Congress could also pass the proposed amendments to the Family Violence Prevention and Services Act. The next easiest approach would be to revive the Security and Financial Empowerment Act of 2019 (“SAFE Act of 2019”). Alternatively, the federal government could add a civil remedy back into VAWA (this time making the remedy available to survivors of economic abuse), amend 18 U.S.C. § 2261, or create a new federal crime of economic abuse. This Note will explore each of these proposals in turn.

⁹⁹ ME. REV. STAT. tit. 10, § 1310-H(2-A) (West 2009) (amended 2019).

¹⁰⁰ *Consumer Data Indus. Ass’n v. Frey*, 495 F. Supp. 3d 10, 20 (D. Me. 2020), *rev’d*, 26 F.4th 1 (1st Cir. 2022).

¹⁰¹ *See Consumer Data Indus. Ass’n v. Frey*, 26 F.4th 1, 12 (1st Cir. 2022) (holding that Maine’s amendments to its Fair Credit Reporting Act were actually not preempted by the federal Fair Credit Reporting Act).

1. The Proposed Amendments to VAWA and the Family Violence Prevention and Services Act.

As previously discussed, in March 2022, Congress passed, and President Biden signed, the Violence Against Women Act Reauthorization Act of 2022 (“Reauthorization Act”).¹⁰² The Reauthorization Act adds a definition of economic abuse and explicitly references economic abuse in the definition of domestic violence.¹⁰³ These changes help ensure that survivors of economic abuse have access to key resources. However, the Reauthorization Act does not amend VAWA in any way that would ensure that survivors have a way to hold their abusers accountable or that economic abusers will be held criminally liable for their actions.

In addition, the Family Violence Prevention and Services Improvement Act of 2021 (“Improvement Act”) was proposed to amend the Family Violence Prevention and Services Act in ways that would increase the support available to survivors of economic abuse. First, the Improvement Act would amend the definition of domestic violence so that it no longer refers to the definition in VAWA, but instead defines domestic violence as “any act, threatened act, or pattern of acts of physical or sexual violence, stalking, harassment, psychological abuse, economic abuse, technological abuse, or any other form of abuse.”¹⁰⁴ The Improvement Act also explicitly defines economic abuse in the context of domestic violence as “behavior that is coercive or deceptive related to a person’s ability to acquire, use, or maintain economic resources to which they are entitled, or that unreasonably controls or restrains a person’s ability to acquire, use, or maintain economic resources to which they are entitled.”¹⁰⁵ These amendments, if passed, would increase the reach of the Family Violence Prevention and Services Act and allow states and other organizations to support survivors of economic abuse in the domestic violence context. The

¹⁰² Press Release, White House, Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA) (Mar. 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vawa> [<https://perma.cc/LVQ9-TVHE>].

¹⁰³ 34 U.S.C. § 12291.

¹⁰⁴ H.R. 2119, 117th Cong. § 3 (2021). While, as discussed previously, one can read the changes made in 2022 to VAWA’s definition of domestic violence into the Family Violence Prevention and Services Act, passing the Improvement Act would make it more readily apparent that the Family Violence Prevention and Services Act is also meant to address economic abuse, something that may not be clear, particularly given that VAWA was only recently amended to include references to economic abuse.

¹⁰⁵ *Id.*

Improvement Act was passed by the House on October 26, 2021, but stalled while on the Senate Legislative Calendar.

Given that one of these proposed amendments has already been signed into law and the other is currently pending before Congress, passing *both* of these amendments would be the easiest way for Congress and the President to signal their support for survivors of economic abuse. Congress would need to take additional actions, given that neither amendment criminalizes economic abuse, but passing these bills would be a significant first step.

2. The Security and Financial Empowerment Act of 2019

In 2019, Senator Patty Murry introduced the SAFE Act of 2019.¹⁰⁶ The bill recognizes that domestic violence is not limited to physical acts of violence, but also encompasses “sexual, emotional, economic, or psychological actions or threats of actions that influence another person.”¹⁰⁷ The bill aims to “empower survivors of domestic violence”¹⁰⁸ by “promot[ing] the economic security and safety of survivors of domestic violence.”¹⁰⁹ The bill aims to accomplish this by promoting survivors’ employment sustainability, authorizing unemployment compensation for survivors of domestic violence, ensuring that survivors of domestic violence can maintain health insurance, and by requiring the Secretary of Health and Human Services to “conduct a study on the barriers that survivors of domestic violence . . . experience in maintaining economic security as a result of issues related to domestic violence.”¹¹⁰ While the bill stalled in the Senate, and thus seems unlikely to pass soon, it demonstrates that members of Congress are aware of the issues presented by economic abuse (and have been since at least 2019).

Like the adopted amendments to VAWA and the proposed amendments to the Family Violence Prevention and Services Act, the SAFE Act of 2019 does not criminalize economic abuse on a federal level. However, it would significantly increase the level of support and resources available to survivors of economic abuse. Given that it had at least moderate support in 2019, reviving this proposed bill would also be a relatively simple way to increase federal

¹⁰⁶ S. 627, 116th Cong. (2019).

¹⁰⁷ *Id.* § 2.

¹⁰⁸ *Id.*

¹⁰⁹ S. 627, 116th Cong. (2019).

¹¹⁰ *Id.* § 511.

support for survivors of economic abuse. However, further reform is still necessary to ensure that economic abusers are held accountable.

3. An Amendment to VAWA that Provides a Civil Remedy for Survivors of Economic Abuse

Any civil remedy that Congress might consider adding to VAWA will face a serious obstacle—in *United States v. Morrison*, the Supreme Court held that the civil remedy that originally appeared in VAWA was unconstitutional.¹¹¹ However, a close look at the Supreme Court’s reasons for that decision, coupled with an examination of the ways economic abuse can impact interstate commerce, demonstrates how a civil remedy for survivors of economic abuse can survive judicial review.

The original civil remedy in VAWA stated that “[a] person . . . who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) shall be liable to the party injured.”¹¹² It authorized an action “for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.”¹¹³ The Supreme Court, as described in Part I, held that this provision was unconstitutional in its decision in *Morrison*. It stated that “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity.”¹¹⁴

The Supreme Court in *Morrison* reviewed the court’s prior commerce clause jurisprudence. A similar review reveals that a civil remedy for economic abuse would not face the same constitutional hurdles that resulted in the invalidation of the original civil remedy. *United States v. Lopez* identified three categories of activity that Congress can regulate under its commerce power: the use of the channels of interstate commerce; the instrumentalities of interstate commerce, or persons or things in interstate commerce; and those activities having a substantial relation to interstate commerce.¹¹⁵ In *Lopez*, the Court quickly concluded that the first two categories were inapplicable and focused on

¹¹¹ *United States v. Morrison*, 529 U.S. 598, 627 (2000).

¹¹² 34 U.S.C. § 12361(c), *invalidated by Morrison*, 529 U.S. at 627. Subsection (b) provided that “[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.” *Id.* § 12361(b).

¹¹³ *Id.* § 12361(c).

¹¹⁴ *Morrison*, 529 U.S. at 613.

¹¹⁵ *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

whether Congress was regulating an activity having a substantial relation to interstate commerce.¹¹⁶ The Court stated that precedent clearly revealed a pattern: “[w]here economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.”¹¹⁷ The Court noted that *Wickard v. Filburn*, which involved a farmer who harvested more wheat than he was allowed to¹¹⁸ and that “is perhaps the most far reaching example of Commerce Clause authority over intrastate activity,”¹¹⁹ still involved economic activity, namely, activity which could “have a substantial influence”¹²⁰ on the wheat market.

Subsequent cases reiterate that, while the activity in question must somehow be economic in nature, “case law firmly establishes Congress’ power to regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce.”¹²¹ The Supreme Court reaffirmed the statement in *Wickard* that “even if appellee’s activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce.”¹²²

Once an activity has been classified as “economic,” the next question is whether or not it has a “substantial” effect on interstate commerce. In order to answer this question, the Court looks at several factors: whether the statute contains an express jurisdictional element that can limit its reach to those activities with an “explicit connection with or effect on interstate commerce,”¹²³ whether the legislative history contains express congressional findings regarding the effects of a particular activity on interstate commerce, and whether the link between the activity in question and interstate commerce is attenuated.¹²⁴ *Morrison* makes clear that, even if there are extensive congressional findings,

¹¹⁶ *Id.* at 559–60.

¹¹⁷ *Id.* at 560.

¹¹⁸ *See Wickard v. Filburn*, 317 U.S. 111, 114 (1942).

¹¹⁹ *Lopez*, 514 U.S. at 560.

¹²⁰ *Wickard*, 317 U.S. at 128.

¹²¹ *Gonzales v. Raich*, 545 U.S. 1, 17 (2005).

¹²² *Id.* (quoting *Wickard*, 317 U.S. at 125); *Taylor v. United States*, 579 U.S. 301, 306 (2016) (quoting *Wickard*, 317 U.S. at 125).

¹²³ *Lopez*, 514 U.S. at 562.

¹²⁴ *Morrison*, 529 U.S. at 612–13 (citing *Lopez*, 514 U.S. at 562–67).

the Court must still determine if Congress is attempting to follow a causal chain from an act that states can regulate under their police power to “every attenuated effect upon interstate commerce.”¹²⁵ However, it appears that an “express jurisdictional element” of the kind described above may be enough to “establish that the enactment is in pursuance of Congress’ regulation of interstate commerce.”¹²⁶

Given the above case law, it appears that Congress has at least three potential options to decrease the likelihood that a civil remedy allowing survivors of economic abuse to sue their abusers would be held unconstitutional. First, Congress could include an “express jurisdictional element” that can limit the reach of the statute. Such a jurisdictional element could resemble that in 18 U.S.C. § 2261, which only covers those persons who travel in interstate or foreign commerce or who cause “a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce.”¹²⁷ However, given that many acts of economic abuse do not touch interstate commerce (such as the myriad ways in which an economic abuser can interfere with a survivor’s education or employment), this kind of statute would likely fail to criminalize many economically abusive tactics.

Second, Congress could also decide not to include a jurisdictional element, rely on extensive legislative findings regarding the ways in which economic abuse impacts interstate commerce, and hope that the Supreme Court would not hold that the link between economic abuse and interstate commerce is too attenuated. This course of action could potentially be risky, however, and Congress would have to make findings beyond those that motivated VAWA’s original civil remedy to decrease the likelihood of a Supreme Court finding that the new civil remedy is also unconstitutional.¹²⁸ Given that economic abuse can affect whether and where a survivor works or goes to school, that abusers can control access to money and bank accounts, and that abusers may force survivors to falsify tax returns,¹²⁹ it is likely that Congress would be able to successfully argue that the link between economic abuse and interstate

¹²⁵ *Morrison*, 529 U.S. at 615.

¹²⁶ *Id.* at 611–12.

¹²⁷ 18 U.S.C. § 2261.

¹²⁸ See H.R. REP. NO. 103-711, at 385 (1994) (Conf. Rep.) (finding that gender-motivated violence affects interstate commerce “by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved, in interstate commerce; . . . by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products”).

¹²⁹ *About Financial Abuse*, *supra* note 36.

commerce is strong enough to justify using its commerce power to provide a civil remedy for survivors of economic abuse. However, if Congress chooses to rely solely on legislative findings in support of such a remedy, it may be advisable to add an amendment to VAWA that provides for the completion of a study of the link between economic abuse and interstate commerce so that the need for a civil remedy will be adequately supported by legislative findings.

The third option is a combination of the options discussed above: Congress could supplement any legislative findings with a jurisdictional element that explicitly limits application of the civil remedy to those acts with a clear impact on interstate commerce. However, as discussed above, any statute that includes such a jurisdictional element would be limited in scope, and many survivors would not have a way to hold their economic abuser accountable.

4. An Amendment to 18 U.S.C. § 2261 that Criminalizes Economic Abuse

As previously discussed, 18 U.S.C. § 2261 currently only criminalizes physical acts of violence that are committed by a person who travels in interstate or foreign commerce or who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce by force, coercion, duress, or fraud.¹³⁰ In order to criminalize economic abuse on a federal level, Congress could amend 18 U.S.C. § 2261, broadening its scope to encompass economic abuse. Congress would then also need to define economic abuse and could utilize the definitions found in either the Improvement Act or in the Reauthorization Act, as both definitions are broad enough to cover the various tactics employed by economic abusers.

Any amendment of Section 2261 would likely face the same challenges as a VAWA amendment: Congress would have to show that such an amendment is within the scope of its power under the Commerce Clause. Congress could do so by any of the methods described above, and as discussed above, the nature of many economically abusive actions would likely be sufficient to establish a link between economic abuse and interstate commerce.

5. A New Federal Crime of Economic Abuse

Proposing to define an entirely new crime in order to address economic abuse and other coercive actions in the context of domestic violence is nothing new: Steve Mulligan, Deborah Tuerkheimer, and Alafair Burke have all done

¹³⁰ 18 U.S.C. § 2261.

so.¹³¹ However, each of their proposed crimes would fail to cover all economically abusive actions.

Steve Mulligan's proposed crime of "Domestic Oppression" would define domestic oppression as "attempt[ing] to gain power and control over an intimate partner through a pattern of oppression; and at least one act of the pattern of oppression constitutes a crime in this jurisdiction."¹³² "Pattern of oppression" would then be defined in one of two ways. First, it could be defined as "two or more crimes or acts of harassment, menacing, threats, kidnapping, economic abuse, sexual abuse, isolation, emotional abuse, psychological abuse, coercion, or abuse of the victim's relationship with the children."¹³³ Alternatively, "pattern of oppression" could be defined as "two or more crimes or acts of harassment, intimidation of a dependent, or interference with personal liberty, or willful deprivation."¹³⁴ If the first definition is used, it initially seems that the proposed crime of domestic oppression may adequately criminalize economic abuse. However, at least one act within the pattern of oppression must constitute a crime within the relevant jurisdiction. Given that many states do not criminalize economic abuse in any way, and that there is no federal crime of economic abuse, this proposed statute would allow abusers who only engage in economic abuse or who do not engage in criminally abusive behavior to continue their behavior without worrying if they are violating the law. Specifically, given that actions such as interfering with one's access to employment or education are generally not criminalized, an abuser who commits economic abuse by engaging in such tactics would not be criminally liable under this proposed statute.

Deborah Tuerkheimer's proposed statute is similar to Mulligan's. Tuerkheimer proposes a crime of battering and suggests that a person could be guilty of battering when "he or she intentionally engages in a course of conduct directed at a family member; [a]nd he or she knows or reasonably should know that such conduct is likely to result in substantial power or control over the family or household member; and at least two acts comprising the course of

¹³¹ See Steve Mulligan, *Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation*, 29 CHILD. LEGAL. RTS. J. 33 (2009); Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959 (2004); Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552 (2007).

¹³² Mulligan, *supra* note 131, at 37.

¹³³ *Id.*

¹³⁴ *Id.* at 38.

conduct constitute a crime in this jurisdiction.”¹³⁵ This statute, like Mulligan’s, would fail to hold all economic abusers accountable, given that many jurisdictions have no crime of economic abuse. Additionally, some abusers may engage solely in economically abusive tactics, or in other tactics which are not criminalized.

Lastly, Alafair Burke’s proposed statute also fails to adequately reach economic abuse. Burke proposes a new crime of “Coercive Domestic Violence” and proposes a statute that reads “a person commits the crime of Coercive Domestic Violence if the person attempts to gain power or control over an intimate partner through a pattern of domestic violence.”¹³⁶ He proposes that “gaining power and control” be defined as “restrict[ing] another’s freedom of action,” and would define “pattern of domestic violence” as “the commission of two or more incidents of assault, harassment, menacing, kidnapping, or any sexual offense, or any attempts to commit such offenses, committed against the same intimate partner.”¹³⁷ Given Burke’s definition of “pattern of domestic violence,” which does not seem to extend to economic crimes, his statute would similarly be inadequate, given that it would reach few, if any, instances of economic abuse.

Rather than defining new crimes by referring to acts that constitute a crime in the relevant jurisdiction, as Mulligan’s and Tuerkheimer’s proposed statutes do, a federal statute criminalizing economic abuse could simply define the offense of “Economic Abuse.” Such a statute could draw inspiration from New Jersey’s and New York’s laws against coercion,¹³⁸ and Maine’s law against “intimidat[ing] or interfer[ing] with or intentionally oppress[ing] or threaten[ing] any other person.”¹³⁹ It might also draw inspiration from VAWA’s definition of abuse later in life, which is defined in part as “neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim,”¹⁴⁰ The new statute might read as follows:

¹³⁵ Turkheimer, *supra* note 131, at 1019–20.

¹³⁶ Burke, *supra* note 131, at 601.

¹³⁷ *Id.* at 602.

¹³⁸ N.J. STAT. ANN. § 2C:13-5 (West 2015); N.Y. PENAL LAW § 135.60 (McKinney 2020).

¹³⁹ ME. REV. STAT. ANN. tit. 17, § 2931 (2006).

¹⁴⁰ *See* 34 U.S.C. § 12291(a)(1)(A)(i).

Economic Abuse: A person is guilty of economic abuse when he or she:

- (1) Compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage; or
- (2) Is in an ongoing relationship of trust with another person and neglects, abandons, or willfully harms that person; or
- (3) Prevents a person from exercising his or her rights under the laws of the state in which said person resides or under the United States Constitution; or
- (4) Performs any other act which does not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her business, calling, career, financial condition, or economic self-sufficiency.

Economic Self-sufficiency: Economic self-sufficiency is defined as the ability to maintain long-term employment with wages that keep both the employed person and his or her family out of poverty and off of welfare rolls, and which are adequate to provide for both the needs of the employed person and his or her family.¹⁴¹

While this proposed statute, like those proposed by Burke, Mulligan, and Tuerkheimer, would still likely not cover all forms of economic abuse, it would criminalize many of the tactics used by economic abusers and would help hold economic abusers accountable for their actions.

B. Legislative Approaches Available to States

In the absence of a federal statute regulating economic abuse, or perhaps in addition to such a statute, there are several actions that individual states could

¹⁴¹ Based on the definition of economic self-sufficiency found in Postmus, *Understanding Economic Abuse*, *supra* note 35, at 414. This is certainly not the best possible definition of economic self-sufficiency possible, given that Postmus et al., describe this definition as inadequate; however, it suffices for the purpose of criminalizing economically abusive acts that limit one's economic self-sufficiency.

take to regulate economic abuse. This Note will explore three such options, in order of feasibility: taking inspiration from current laws against elder abuse, creating a statute like those found in New York, Hawaii, or Maine, or creating an entirely new crime of economic abuse.

1. A Statute Based on Laws Criminalizing Elder Abuse

Crafting a statute based on laws criminalizing elder abuse would likely be the most feasible option available to states, as a state could simply refer to an existing law that is already designed to criminalize economic abuse, albeit in a different context. States have criminalized economic abuse of elders in a variety of ways. This Note will explore three examples: Alabama's statute criminalizing financial exploitation of an elderly person,¹⁴² Utah's statutes criminalizing various forms of abuse of a vulnerable adult,¹⁴³ and Delaware's statute criminalizing crimes against a vulnerable adult.¹⁴⁴

Alabama defines financial exploitation as "the use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly person's property with the intent to deprive the elderly person of his or her property."¹⁴⁵ An elderly person is defined as "[a] person 60 years of age or older."¹⁴⁶ Alabama criminalizes financial exploitation of an elderly person when the value of the property taken exceeds \$2,500.¹⁴⁷ A state that wishes to take a similar approach to criminalizing economic abuse might consider a definition similar to that of financial exploitation. Such a statute might define economic abuse as "the use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over a person's finances, employment, education, or any decisions that said person has a right to make or to refrain from making."

Utah criminalizes the financial exploitation of a vulnerable adult.¹⁴⁸ A person commits the offense of financial exploitation of a vulnerable adult when the person:

¹⁴² ALA. CODE § 13A-6-191(3), (5) (2015).

¹⁴³ *See, e.g.*, UTAH CODE ANN. §§ 76-5-111, 76-5-111.4 (West 2015).

¹⁴⁴ DEL. CODE ANN. tit. 11, §§ 1105(a), (c), (f) (West 2010).

¹⁴⁵ ALA. CODE § 13A-6-191(5) (2015).

¹⁴⁶ *Id.* § 13A-6-191(3) (2015).

¹⁴⁷ *Id.* § 13A-6-195 (2015).

¹⁴⁸ UTAH CODE ANN. § 76-5-111.4(2) (West 2015).

(a) is in a position of trust and confidence . . . with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(b) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use . . . the vulnerable adult's fund, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

(c) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult.¹⁴⁹

Financial exploitation of a vulnerable adult can be a second degree felony, a third degree felony, a Class A misdemeanor, or a Class B misdemeanor, depending on the "aggregate value of the resources" in question and on the guilty person's state of mind (intentionally, knowingly, recklessly, or with criminal negligence, respectively).¹⁵⁰ A criminal economic abuse statute modeled after Utah's exploitation statute could utilize the same language, given that a spouse or intimate partner often occupies a "position of trust and confidence" and in some cases may have "undue influence" over their spouse or partner. Additionally, Utah's statute is fairly comprehensive and would cover many of the tactics used by economic abusers.

Lastly, Delaware law simply states "[a]ny person who commits, or attempts to commit, any of the crimes or offenses set forth in subsection (f) of this section against a person who is a vulnerable adult is guilty of a crime against a vulnerable adult."¹⁵¹ Subsection (f) lists more than fifty crimes that are "underlying offenses for the purposes of [§1105]."¹⁵² If a state chose to model a

¹⁴⁹ *Id.*

¹⁵⁰ UTAH CODE ANN. § 76-5-111.4(3) (West 2015).

¹⁵¹ DEL. CODE ANN. tit. 11, § 1105(a) (West 2010).

¹⁵² *Id.* § 1105(f) (West 2010).

criminal economic statute after Delaware's statute, said state could create a two part statute. The first part could read: "Any person who engages in any of the acts, or attempts to engage in any of the acts set forth in subsection (b) of this section against a member of their family or against an intimate partner is guilty of the crime of economic abuse." Subsection (b) could then list out any number of economically abusive tactics—as many as the state in question chooses to criminalize. Since some economically abusive actions are more heinous than others, a state could also take a page out of Utah's book and categorize certain actions as felonies, and others as misdemeanors—and perhaps further subdivide the categories into different degrees of felonies and misdemeanors.

2. Criminal Laws Modeled After Existing State Laws that Can be Used to Address Economic Abuse

Like modelling a new statute after laws which criminalize elder abuse, creating a statute based on current state laws that could be used to address economic abuse would similarly be quite feasible. When deciding which state's law(s) to use as inspiration, states should consider the following three options: criminalizing coercion, criminalizing coercive control, and criminalizing interference with a person's constitutional and civil rights.

New York's law against coercion in the third degree¹⁵³ is similar to laws in New Jersey¹⁵⁴ and Colorado,¹⁵⁵ which criminalize coercion and extortion, respectively. New York's coercion law states:

"A person is guilty of coercion . . . when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage . . . by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will . . . [p]erform any other act which would not in itself materially benefit the actor, but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships."¹⁵⁶

¹⁵³ N.Y. PENAL LAW § 135.60 (McKinney 2020).

¹⁵⁴ N.J. STAT. ANN. § 2C:13-5 (West 2015).

¹⁵⁵ COLO. REV. STAT. ANN. § 18-3-207 (West 2013).

¹⁵⁶ N.Y. PENAL LAW § 135.60(9) (McKinney 2020).

While the language in New Jersey's and Colorado's statutes differs slightly, the idea is the same. First, the statute prohibits a person from making another person do something that other person has a legal right to abstain from doing and from prohibiting another person to do something that other person has a legal right to do. Second, the statute criminalizes the various ways in which a person could commit the prohibited acts. Any state that wished to model a statute criminalizing economic abuse after one of these statutes could do so easily, with perhaps minor modifications to ensure a particular statute is in line with a state's policy goals.

Hawaii criminalizes the abuse of family members, and specifically states that "[i]t shall be a petty misdemeanor for a person to . . . exercise coercive control. . . over a family or household member."¹⁵⁷ Coercive control is defined as:

“[A] pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior.”¹⁵⁸

The statute then lists various examples of coercive control, including “controlling how much money is accessible to the individual and how it is spent.”¹⁵⁹ A state wishing to criminalize economic abuse could utilize Hawaii's definition of coercive control, substituting the term economic abuse for coercive control, and then listing various examples of economic abuse, such as controlling a person's access to financial resources, preventing a person from attaining or maintaining employment, etc.

Maine makes it a crime to interfere with a person's constitutional and civil rights. The relevant statute states:

“A person may not, by force or threat of force, intentionally injure, intimidate or interfere with or intentionally attempt to injure, intimidate or interfere with or intentionally oppress or

¹⁵⁷ HAW. REV. STAT. ANN. § 709-906(6) (West 2021).

¹⁵⁸ HAW. REV. STAT. ANN. § 586-1 (West 2008).

¹⁵⁹ *Id.*

threaten any other person in the free exercise or enjoyment of any right or privilege, secured to that person by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States.”¹⁶⁰

While this statute makes no explicit reference to economic abuse, or even a person’s finances in general, it is broad enough to conceivably cover at least some forms of economic abuse. That said, should a state choose to model a statute after Maine’s statute, it would be advisable to consider amending the laws of that state to clearly assert that a person has a right to be free from economic abuse. Alternatively, the State can codify a statute providing that, absent any mitigating circumstances,¹⁶¹ a person has the right to control their own finances and to engage in or refuse the employment and educational opportunities of their choice. Such provisions would ensure that it is clear that a person has the overt right to be free from economic abuse.

3. An Entirely New Crime of Economic Abuse

Given the above discussion of what a federal statute criminalizing economic abuse might look like, it is unnecessary to rehash the key points of that discussion here. It suffices to say that states have a variety of options available to them should they choose to explicitly criminalize economic abuse. Such a statute should be broad enough to encompass as many economically abusive tactics as possible, while also narrow enough to prevent frivolous claims. The statute should be written so as to take into account the subtle nature of economic abuse while also ensuring that claims are not brought based on simple disagreements regarding finances—perhaps by requiring evidence of a pattern of abuse over a certain period of time. Ultimately, the goal of such a statute should be the deterrence of current and would-be economic abusers.

C. Recommended Next Steps

The above subsections describe three bills previously or currently before Congress that can be used to address the problem of economic abuse and suggest additional steps that could be taken by the federal government and by individual states. While all of the legislative approaches available to the federal government and to states would, at a minimum, increase awareness of economic abuse and its effects, some approaches are much more likely to hold economic abusers accountable, and should thus be prioritized.

¹⁶⁰ ME. REV. STAT. ANN. tit. 17, § 2931 (2006).

¹⁶¹ Such mitigating circumstances could include severe illness or other instances in which a person is incapable of managing their own affairs.

First, the federal government should consider amending 18 U.S.C. § 2261. Doing so would likely be relatively simple and involve relatively minor amendments to the statutory language. Given that 18 U.S.C. § 2261, as currently drafted, does not seem to have any commerce clause issues, any amendments to this statute would likely not raise the constitutional concerns that might be raised by adding a civil remedy for economic abuse into VAWA. That said, the federal government should also consider creating a new statute that criminalizes economic abuse, as such a statute can reach behaviors that might not be covered by an amendment to 18 U.S.C. § 2261.

In addition, each state should pass a law that criminalizes economic abuse. While Maine's law¹⁶² against interference with a person's constitutional and civil rights could theoretically be used to criminalize economic abuse, it is likely the least effective option, given that it does not explicitly criminalize behavior that affects a person's financial condition. Rather, states should model their economic abuse laws after the structure of either Delaware's elder abuse statute¹⁶³ or Hawaii's¹⁶⁴ coercive control statute. Both statutes start with a general prohibition and then list out specific actions that are prohibited. Statutes that criminalize economic abuse could be drafted similarly, with a general prohibition and then a list of economically abusive actions that are prohibited. This would allow states to target specific abusive behaviors. A state economic abuse statute should also take a page out of Utah's book¹⁶⁵ and categorize the most egregious economically abusive tactics as felonies and more minor tactics as misdemeanors.

Any actions taken by the federal government or by states would likely take an extended period of time, especially if legislators choose to create a new criminal statute. Thus, states and local advocates should continue to educate members of their communities regarding the issues posed by economic abuse and should ensure that people are trained to recognize the many forms that economic abuse can take. States and local advocates should also carefully examine the 2022 amendments to VAWA, determine how said amendments can be used to best support survivors of economic abuse, and advocate for future changes.

¹⁶² ME. REV. STAT. ANN. tit. 17, § 2931 (2006).

¹⁶³ DEL. CODE ANN. tit. 11, § 1105 (West 2010).

¹⁶⁴ HAW. REV. STAT. ANN. § 709-906(6) (West 2021).

¹⁶⁵ See UTAH CODE ANN. § 76-5-111.4(3) (West 2015) (criminalizing the financial exploitation of a vulnerable adult).

CONCLUSION

Depending on the state in which they live, Marissa and Tonya may have had very little governmental support as they attempted to escape their abusers. They may have also been unlikely to have any recourse if they wanted their abusers to be held criminally liable. While the 2022 amendments to VAWA begin to provide a solution to the first problem, a lot remains to be done to ensure that economic abusers can be held accountable for their actions. Legislators, particularly at the state level, must recognize that economic abuse and the associated creation of economic dependency can affect survivors in a myriad of ways and can be a deciding factor in whether a survivor will be able to leave their abuser. If the federal government does not wish to criminalize economic abuse, they should at least take the steps necessary to ensure that survivors of economic abuse have a civil remedy available to them. Ideally, however, they will also ensure that economic abusers are held criminally liable. Each state should also take action to pass a statute criminalizing economic abuse. In the interim, government officials at all levels should work in tandem with domestic violence advocates to ensure that as many people as possible are informed about the problem of economic abuse, the devastating effects it can have, and the myriad forms it can take.